

))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 519 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

AND

Hon'ble' MR.JUSTICE H.R.SHELAT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KALUBHAI MULABHAI MALI

Appearance:

Mr. M.A. Bukhari APP for the appellant.

MR KR RAVAL for Respondent No. 1, 2.

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE H.R.SHELAT

Date of decision: 17/06/1999

ORAL JUDGEMENT

The present appeal is directed against the acquittal judgment and order recorded by learned Additional Sessions Judge, Panchmahals, in Sessions Case No. 99 of 1984 on 27-2-1985 whereby respondents -

original-accused persons came to be acquitted from the charges against them.

2. It was the prosecution case that on 9-5-1984 at about 7.30 p.m. at village Limbdi complainant Hirabhai Kushalbhai and the deceased Punabhai who was his cousin-brother deceased, and his mother Ramiben had gone to Talavwala field which is adjacent to the field of accused No.1 Kalu Mula. Deceased Puna had burnt dried mango leaves near the common boundary due to which hedge of field of accused No.1 also caught fire and ultimately burnt, as a result of which accused No.1 Kalu abused the deceased and his mother Ramiben. Thereafter, accused persons returned home. Deceased had also left for home in the evening in his bullock-cart. At that time, the accused No.1 being indignited inflicted axe blows on the head portion of the deceased from behind, as a result of which deceased had fallen down and succumbed to the same. It was alleged by the prosecution that accused No.1 Kalu had committed offence of murder whereas accused No.2 Punja Deva was instigating accused No.1.

3. In order to substantiate and verify the charge at Ex.3 under Section 302 of Indian Penal Code, the prosecution placed reliance on the following 10 witnesses;

Sl. No. Name Exh.

1. Hirabhai Kushalbhai 6
2. Rajendrakumar Badrilal Nagda 18
3. Devabhai Dulabhai 21
4. Popatlal Jivanlal Panchal 22
5. Ramiben Rupabhai 23
6. Ramabhai Hirabhai 24
7. Nasibkhan Dalekhan Patan 21
8. Amarsinh Bhagwansinh 27
9. P.S.I., F.S. Mahida 31
10. S.T.P.A. Nagarsinh Kashnabhai 33

4. The trial Court, after making extensive assessment of evidence of the prosecution, found that the guilt of the accused persons was not established beyond reasonable doubt. Therefore, the trial Court acquitted both the accused persons by passing impugned judgment and order of 27th February 1985 which precisely under challenge at the instance of the State. We have given anxious thoughts to the facts of the present case and the evidence emerging from the record and having heard the rival versions, we are of the clear opinion that the reasons assigned by the trial Court in not placing

reliance on the evidence of the prosecution are quite substantive, weighty and justified. The complainant Hiralal Kushalbai, who posed to be a eye witness, turned out to be a liar. He had as such not witnessed the incident. The trial Court has ascribed various reasons for discarding the testimony of the complainant Hirabhai Kushalbai. It is also noticed by the trial Court from the analysis of the evidence of the prosecution that prosecution witness Deva Dula at Ex.21 and prosecution witness Panchal Popat at Ex.20, were also not telling the whole truth. No doubt, the trial Court has held, that the death of deceased Punabhai was homicidal and it was possible by sharp-cutting weapons like knife and axe, but the author of the crime could not be proved beyond doubt. The element of doubt, which is evident in the evidence of both the so-called eye witnesses Deva Dula and Panchal Popat, is rightly held in favour of the accused persons. The prosecution unfortunately could not lead a strong, sound, convincing and coherent evidence bridging nexus between the death of the deceased and the alleged act of the accused persons.

5. Not only that, the prosecution case was also that the muddamal axe was recovered by the accused No.1 pursuant to discovery Panchnama held to be not reliable, for which various reasons are rightly and elaborately mentioned by the trial Court. Firstly, axe did not contain any incriminating marks, much less, the blood marks. Secondly, the axe, which was sought to be recovered, is admittedly, a common weapon employed and kept by a rural rustic agriculturist in villages. The trial Court has rightly, therefore, found that discovery panchnama Ex. 25 does not advance the prosecution case any further so as to compassionate the accused persons with alleged complicity of murder of deceased Puna. Again, the evidence of the prosecution went on mentioning that various blows of axe came to be inflicted on the body of the deceased Puna which is not supported by the medical evidence. It is not in dispute that upon the autopsy the deceased was found to have sustained one injury on the head from behind and it was possible by sharp-cutting instrument. The so-called eye-witness, complainant himself, also could not clearly mention that the deceased was done away with by a weapon like axe. He has stated in his testimony that a sharp-cutting instrument was used by the accused while inflicting a blow on the anatomy of the deceased.

6. In fact, we have no hesitation in finding, that the reasons assigned and ultimate conclusion recorded by the trial Court, in passing impugned acquittal judgment

and order against the accused persons, could not be said to be unjust, unreasonable or perverse, in any manner, requiring our interference exercising our powers under Section 378 of the Criminal Procedure Code. Needless to reiterate, that having once broadly agreed with the reasons and ultimate conclusions of the trial Court, the appellate Court do not embark upon meticulous and minute repetition or inquire into the same grounds. We, therefore, have to raise our hands in helplessness in dismissing the acquittal appeal at the instance of the State. With the result, the appeal is dismissed. The bail bonds of the accused persons shall stand cancelled.

(rmr).